



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appl. No. : 10/720,278
Applicant : Alain POIRAUD
Filed : November 25, 2003
Title: : ASYMMETRICAL UNBALLASTED ANCHOR
TC/A.U. : 3617
Examiner : Ajay Vasudeva

Docket No. : 2937-115
Customer No. : 6449
Confirmation No. : 4789

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Sir:

The following comprises the Applicant's Brief on Appeal from the Office Action dated September 13, 2005 ("the second Office Action"), in which Claims 1-3, 5, 9 and 11-12 were finally rejected. A Notice of Appeal was filed March 13, 2006 along with a Pre-Appeal Brief Request for Review and a petition for one-month extension of time is submitted herewith. A decision on the Request was mailed on April 11, 2006 stating that issues remaining for appeal. This Appeal Brief is accompanied by the required Appeal fee set forth in 37 C.F.R. § 1.17(c), along with a petition for an extension of time, and is accordingly, timely filed.

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I.

REAL PARTY IN INTEREST

The owner of the above-referenced patent application and the real party in interest in this appeal is the inventor, Alain Poiraud, residing in Soukra, Tunisia.

II.

RELATED APPEALS AND INTERFERENCES

The Applicant is unaware of any other appeals or interferences related to the subject matter of this appeal.

III.

STATUS OF CLAIMS

Claims 1-3 and 5-14 are pending in the application. Claims 1-3, 5, 9 and 11-12 were rejected in the Final Office Action dated September 13, 2005. Claims 6-8 and 12-14 were objected to for being dependent upon rejected claims. Applicant appeals from the rejection of claims 1-3, 5, 9 and 11-12. The appealed claims are reproduced in the Appendix attached hereto.

IV.

STATUS OF AMENDMENTS

No further Amendments have been filed.

V.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention is directed to an asymmetrical boat anchor having an unballasted fluke. The unballasted fluke has a tip and a back with a curved edge. A shank is mounted on the fluke and has an opening at the end opposite the fluke. An edge of the shank away from the tip of the fluke is curved, and the opening in the shank is offset from a plane tangent to the back edge of the fluke and to the edge of the shank. The shank is mounted on the half portion of the fluke near the tip of the fluke.

The invention is based on the discovery that the efficiency of an anchor does not increase with its weight, but with the efficient surface of its fluke. (Specification, page 2, lines 26-27.) Thus, the present invention overcomes the prejudice of the prior art, according to which an anchor should be as heavy as possible. (Specification, page 2, lines 26-28.) Contrary to this prejudice, the invention proposes to increase the surface of the fluke as compared to prior art anchors having similar weight. This allows the anchor, once buried into the sea ground, to efficiently resist traction on the shank. In addition, the invention eliminates or limits the need for ballasting the anchor, which simplifies the manufacture of the anchor and makes it less costly. (Specification, page 2, lines 24-33.)

A simplistic example of an unballasted anchor is disclosed in reference to the drawings; the fluke is formed of a metal sheet having a constant thickness. (Specification, page 3, lines 5-6.) The fact that an anchor is unballasted may also be

expressed by the ratio of the surface of the fluke to the weight of the anchor. The surface of the fluke is measured as the projection of the fluke in a plane containing the bottom line of the fluke. The ratio for the prior art disclosed in EP-B 0 840 691 is about 45 to 65 cm²/kg. For the anchor of the invention, the ratio is higher than 80 cm²/kg, and preferably higher than 100 cm²/kg, even more preferably, the ratio is higher than 115 cm²/kg. (Specification, page 3, lines 9-14.)

The anchor of the present invention has an anchoring position, where it contacts the sea ground at 3 points: the tip of the fluke, one side of the back of the fluke, and the free end of the shank. (Specification, page 3, lines 15-17.) Unballasted anchors may have a position of unstable equilibrium, resting on the sea ground in a reverse position. In this unstable position, the anchor contacts the sea ground through the back of the fluke and the top edge of the shank. In order to ensure that the anchor turns to the anchoring position, the present invention provides that, in the unstable equilibrium position, the free end of the shank is offset from the sea ground. In other words, the free end of the shank is offset from a plane tangent to the back of the fluke and to the upper edge of the shank. This ensures that when the traction of the anchored boat pulls on the free end of the shank, the anchor will roll on the upper edge of the shank into the anchoring position. This rolling of the anchor is facilitated when the upper edge of the shank, between the free end and the point of the tangency of the plane is curved. (Specification, page 3, lines 20-30.)

Claim 2 includes the further limitation that the ratio of the surface of the fluke to the weight of the anchor is higher than 80 cm²/kg. (Specification, page 3, line 14.)

Claim 3 includes the further limitation that the center of mass of the anchor is located nearer to the tip of the fluke than to the back edge of the fluke. As shown in Fig. 1, the shank extends beyond the fluke over the tip of the fluke. This helps in increasing the proportion of the weight of the anchor on the tip of the anchor. (Specification, page 4, lines 29-31.) As compared to Fig. 2, in both cases, the shank in the embodiment of the figures is nearer to the tip than the back of the fluke. Again, these features help increasing the proportion of the weight of the anchor on the tip without ballast. This proportion may be measured by positioning the anchor, in the anchoring position, on three scales located at the three points of contact. It is preferred that the proportion of the weight on the tip be higher than 20%; in the example, the proportion is around 23%. This is considerably higher than the proportion of weight in the unballasted anchor of the prior art, which is about 16%. (Specification, page 4, line 35 to page 5, line 4.)

Claim 5 further limits the subject matter wherein the proportion of the weight of the anchor on the tip is higher than 20%.

Claim 9 further limits the subject wherein the fluke is provided with a sand-guide at an upperside of the back. That is, on one or both sides of its back edge, the fluke may include ears 12, 14. These ears or lateral sand-guides extend at an angle of about 70° of the surface of the fluke, or with a small angle to the sea ground. (Specification, page 4, lines 10-13.)

Claim 11 limits the invention to an anchor wherein the ratio of the surface of the fluke to the weight of the anchor is higher than 100 cm²/kg.

Claim 12 limits the anchor of claim 1, wherein the proportion of weight of the anchor on the tip is higher than 20% when said anchor is in an anchoring position. (See above.)

VI.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following issues are presented by this appeal:

- 1) Whether Claim 12 fails to meet the written description requirement under 35 U.S.C. § 112, first paragraph. (Second Office Action at 2.)
- 2) Whether Claims 1 and 3 are anticipated under 35 U.S.C. § 102(a) by FR 2820108. (Second Office Action at 3.)
- 3) Whether Claims 2, 5, 9, 11 and 12 are unpatentable under 35 U.S.C. § 103(a) as obvious over FR 2820108. (Second Office Action at 4.)

VII.

ARGUMENT

1) **Claim 12 complies with the requirements of 35 U.S.C. § 112, first paragraph because its limitations are fully supported by the original specification**

The rejection of claim 12 is based on the written description requirement of the first paragraph of 35 U.S.C. § 112, first paragraph, not the enablement requirement. As shown below, the written description requirement is clearly met.

In order to meet the written description requirement, the specification must merely disclose the claimed invention in such a way that one having ordinary skill in the art would understand that the applicant *possessed* the invention at the time of filing. MPEP § 2163; *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555 (Fed. Cir. 1991). The Applicant previously set forth in detail the location in the specification where the support for the limitations of claim 12 is found. (Amendment dated January 13, 2006, at 2-3.) Namely, the features of claim 12 are clearly described at pages 4-5 of the original disclosure: "[T]he shank extends beyond the fluke, over the tip of the fluke. This helps in increasing the proportion of the weight of the anchor on the tip 6 of the anchor. . . . This proportion may be measured by positioning the anchor, in the anchoring position, on three scales located at the three points of contact. It is preferred that the proportion of weight on the tip be higher than 20%; in the example, the proportion is around 23%." As is clear, the limitation of claim 12, "wherein the proportion of the weight on the anchor on the tip is higher than 20% when said anchor is in an anchoring position" is taken nearly *verbatim* from the specification. In view of this disclosure - - an example

that meets the requirements of claim 12 - - the Applicant submits that one having ordinary skill in the art would believe that the inventor of the present invention had possession of the invention as claimed in claim 12 at the time that the application was made. Thus, the written description requirement is met with respect to claim 12.

Thus, the Applicant has met his burden with respect to the written description requirement and the rejection of claim 12 thereby should be withdrawn.

2) **Claims 1 and 3 are not anticipated by FR 2820108 because the claims recite subject matter not disclosed by FR 2820108.**

What a prior art reference teaches one of ordinary skill in the art is a question of fact. *In Re John R. Beatie*, 974 F.2d 1309, 1313 (Fed. Cir. 1992). FR 2820108 fails to anticipate any of claims 1 and 3 because, as the weight of the evidence before the Examiner reveals, FR 2820108 fails to show or suggest an anchor having an unballasted fluke as defined by those claims. The following evidence was presented to the Examiner:

1. FR 2820108 expressly describes its anchor as having ballast on its fluke.
(See Amendment dated June 11, 2005 at 15-16.)
2. The Background section of the present application expressly disclaims the ballasted anchor disclosed in FR 2820108. (See Amendment dated January 13, 2006 at 3.)
3. The Applicant submitted a true image of the commercial anchor covered by FR 2820108, which also shows the ballast. (See Section IX, Evidence Exhibit; (Amendment dated June 11, 2005 at 17).)

4. The Applicant submitted additional evidence in the form of a sworn declaration by the inventor, an expert in the field of art of the present invention, stating that the anchor of FR 2820108 is in fact, ballasted, and that one having ordinary skill in the art would understand the disclosure of FR 2820108 to teach an anchor having a ballasted fluke. (Amendment dated January 13, 2006 at 4; Poiraud Declaration, attached at Section IX, paras. 1-4.)

The evidence listed above each independently shows that the claimed anchor having an unballasted fluke is not disclosed by FR 2820108, and the weight of the evidence taken together is unrebuttable.

First, the words of FR 2820108 itself describes a fluke having ballast. "The part of the [fluke] 2 included between point 6 and opening 5 forms a massive counterpoint 8. Counterpoint 8 serves as ballast and makes it possible to place the anchor in position on its three points of support when it arrives on the seabed.... The weight of counterpoint 8 also has a tendency to generate pressure of point 6 on the seabed, which again contributes to the promoting its burial." (Figs. 1-2 and pages 5-6 of FR 2820108.) The Examiner completely ignored this language and asserted without any factual support, that the feature would not be considered ballast because the counterpoint ballast does not appear to be detachable from the anchor. See, e.g., Office Actions dated September 13, 2005 at 3 and March 11, 2005 at 8. It is improper for the Examiner to ignore the plain language of the reference itself when making a determination regarding the scope of the reference without any factual basis. In

essence, the Examiner is rendering meaningless the term unballasted by interpreting it to cover that which is expressly called ballast.

On point, the Applicant assisted the Examiner by providing the declaration of Alain Poiraud. Although Mr. Poiraud is the inventor of the present application, he is an unquestioned expert in the field of ocean anchor design -- Mr. Poiraud has 45 years of sailing experience and 13 years of ocean engineering experience -- and his opinion must be considered to carry some weight. *In Re Beatie*, at 1313; *Orthopedic Equipment Co. v. United States*, 702 F.2d 1005, 1012 (Fed. Cir. 1983).

As set forth in his declaration, one skilled in the art would understand that the anchor of FR 2820108 has a ballasted fluke. (Paragraph 3A-E of the Poiraud Decl.) Mr. Poiraud's opinion is factually supported by the specification of the present application. (Specification p. 1, lines 20-36 ("EP-B-0 840 691 discloses a marine anchor ... A ballast is provided at the tip of the anchor fluke...Thanks to the ballast at the tip of the fluke, the centre of gravity of the anchor is located near to the tip....FR-A-2 820 108 discusses an anchor with a similar shape."); p.2, lines 34-36, ("The anchor [of the present invention] is unballasted, in that there is no need to provide additional ballasting on the fluke -- as in EP-B-0 840 691 or in FR-A-2 820 108. "); see, also, paragraph 3F-G of the Poiraud Decl.) As a result of the claimed invention, by avoiding ballast, the present invention can, for a given weight, increase the surface area of the fluke significantly as compared ballasted anchors. *Id.*

In response to the Applicant's position, the Examiner argued that the "Applicant's Specification has neither specifically defined as to what can, or cannot, be considered a

ballast; nor has the applicant drawn a clear cut distinction between a “ballasted fluke” and an “unballasted fluke.” Therefore, the limitation “ballast” has been broadly interpreted to mean any such weight that is provided in addition to the original weight of the fluke so as to further increase the total weight of the fluke.” (Second Office Action at 7.) These contentions are factually unsupported and, as described above, have been fully rebutted by the Applicant. The Examiner then reasoned, without providing any factual support, that the ballast expressly disclosed FR 2820108 is not *really* ballast because it allegedly constitutes part of the original weight of the fluke.

Although there is no express definition of the term “ballast” in the specification, the Applicant has specifically delineated boundaries of the term ballast with respect to the disclosure of FR 2820108. As described above, the Applicant's own disclosure states that unballasted means “that there is no need to provide additional ballasting on the fluke – as in EP-B-0 840 691 or in FR-A-2 820 108.” (Specification at p.2 lines 34-36.) Therefore, it is improper to construe the claimed “unballasted fluke” to cover FR 2820108, and the Examiner's position is contrary to the express teachings of the present application and of the prior art.

Since the unrebutted weight of the factual evidence shows that FR 2820108 fails to disclose an anchor having an unballasted fluke, which is required by claim 1, upon which claim 3 depends, the rejection of claims 1 and 3 is improper and should be withdrawn.

Further, although the Poiraud Declaration has been entered for the purposes of appeal (Advisory Action dated February 13, 2006), the Examiner did not properly

consider and comment on the evidence as required by the MPEP.¹ Therefore, for this additional reason, the rejections should be withdrawn.

3) **Claims 2, 5, 9 and 11-12 are not obvious over FR 2820108 because they recite subject matter not shown or suggested by FR 2820108.**

FR 2820108 fails to render obvious any of claims 2, 5, 9 or 11-12 which depend upon claim 1 because, as described in Section VII.2 above, FR 2820108 fails to show or suggest an anchor having an unballasted fluke as defined by those claims.

Furthermore, each of claims 2, 5, 9 and 11-12 recite additional features not shown or suggested by FR 2820108 which are additional grounds for patentability.

Claim 2 includes the feature “wherein the ratio of the surface of the fluke (2) to the weight of the anchor is higher than 80 cm²/kg.” Claim 11 recites that the same ratio is higher than 100 cm²/kg.

The Examiner admitted that FR 2820108 fails to disclose any specific ratio but took the unsupported position that it would have been an obvious design choice and that one would be motivated to maximize the area of contact when embedded in the ground. Nothing in FR 2820108 was cited for such motivation. (Second Office Action at 5.)

Indeed, FR 2820108 teaches away from increasing the surface area to weight ratio of an anchor. Specifically, FR 2820108 fails to suggest increasing the surface area of the fluke and, instead, emphasizes the importance of ballast. (See FR 2820108 at 5-

¹ MPEP § 716.01 requires that all entered affidavits, declarations and other evidence traversing rejections are acknowledged and commented upon by the examiner in the next succeeding action. General statements without an explanation supporting such findings are insufficient.

6, ("Counterpoint 8 serves as ballast and makes it possible to place the anchor in position on its three points of support when it arrives on the sea bed. It also makes it possible to stabilize the anchor in this position when the anchor is pulled by the mooring line....The weight of counterpoint 8 also has a tendency to generate pressure of point 6 on the seabed, which again contributes to promoting its burial.".) Thus, one having ordinary skill in the art would be motivated to increase the ballast on the tip of the fluke of FR 2820108 to assist with anchoring and promote the burial of the anchor, not the surface area of the fluke. Such an increase in weight would decrease the surface area to weight ratio of an anchor. Thus, no motivation exists to modify the anchor of FR 2820108 as asserted by the Examiner, and FR 2820108 teaches away from such modification, and therefore, the rejections of claims 2 and 11 are improper.

Claim 5 and 12 recite the limitation that the percentage of the weight of the anchor on the tip is greater than 20%. Regarding claim 5, it was asserted in the Office Action that when the anchor is put in a particular position with the tip of the fluke pointing down, the weight of the anchor on the tip is higher than 20%. This is a completely theoretical supposition. Anchors are launched in the water, for example, between 6 to 12 meters deep. In the case that the anchor falls to the bottom and comes to rest in the position as asserted in the Office Action, the anchor is in a completely unstable position will continue its movement until it will be in a stable position, the penetrating or "anchoring position." However, as explained on pages 4 and 5 in the Specification, the proportion is measured by positioning the anchor in the anchoring position (e.g., resting on three points: the tip, one of the sand guides, and the distal

extremity end of the shank). FR 2820108 fails to disclose anything regarding the proportion of the weight on the tip being greater than 20%, when in the anchoring position. Thus, the unsupported position set forth by the Examiner is rebutted by the Applicant and the rejection of claims 5 and 12 is improper.

4) Conclusion

In view of the foregoing, Applicants respectfully submit that all grounds of rejection of claims 1-3, 5, 9, and 11-12 are submitted to be unsupportable on the record and thus improper. The Honorable Board is therefore respectfully requested to reverse all grounds of rejection and to direct the passage of this application to issue.

Please charge any fee or credit any overpayment pursuant to 37 §C.F.R. 1.16 or §1.17 to Deposit Account No. 02-2135.

Respectfully submitted,

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VIII.

APPENDIX OF CLAIMS ON APPEAL

Claim 1. An asymmetric boat anchor, comprising:

an unballasted fluke (2) having a tip (6) and a back (8) with a curved edge (10);

a shank (4) mounted on the fluke, with an opening (20) at an end (18) opposite the fluke;

wherein an edge (26) of the shank away from the tip (6) of the fluke is curved and wherein the opening (20) is offset from a plane (30) tangent to the back edge (10) of the fluke and to the edge (26) of the shank;

wherein the shank is mounted on the half portion of the fluke near to the tip (6).

Claim 2. The anchor of claim 1, wherein the ratio of the surface of the fluke (2) to the weight of the anchor is higher than $80 \text{ cm}^2/\text{kg}$.

Claim 3. The anchor of claim 1, wherein the center of mass of the anchor is located nearer to tip (6) of the fluke than to the back edge (10) of the fluke.

Claim 5. The anchor of claim 1, wherein the proportion of the weight of the anchor on the tip is higher than 20%.

Claim 9. The anchor of claim 1, wherein the fluke is provided with a sand-guide (12,14) at an upper side of the back (8).

Claim 11. The anchor of claim 1, wherein the ratio of the surface of the fluke (2) to the weight of the anchor is higher than $100 \text{ cm}^2/\text{kg}$.

Claim 12. The anchor of claim 1, wherein the proportion of the weight of the anchor on the tip is higher than 20% when said anchor is in an anchoring position.

IX.

EVIDENCE APPENDIX

A copy of a Declaration pursuant to 37 C.F.R. § 1.132, by the Inventor, Alain Poiraud, an expert in the field of the invention, is attached. This Declaration was submitted with the Applicant's response on January 13, 2006. The Declaration was entered by the Advisory Action dated February 13, 2006.

Also attached is an image of the anchor patented in FR 2820108, which was submitted as part of the Applicant's June 11, 2005 response. The Examiner commented on and presumably entered the evidence in the Office Action dated September 13, 2005.



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**DECLARATION OF ALAIN POIRAUD
PURSUANT TO 37 C.F.R. § 1.132**

I, Alain Poiraud, hereby declare as follows:

1. I am the inventor of the invention disclosed and claimed in the present U.S. patent application.
2. I have been an ocean engineer for 13 years. I have 45 years sailing experience. I am the designer of the Spade anchor. I founded the Spade Anchor Company and am currently the General Manager thereof. I am the author of a French book "Tout savoir sur le mouillage", published in German under the title "Besser Ankern" and under printing also in English by one of the leading US Nautical publisher under the title "The Complete Anchoring Handbook". I consider myself to be an expert on ocean anchor designs and am one skilled in the art with respect to my own invention.
3. I have carefully reviewed the Office Action dated September 13, 2005, in the present application along with the cited prior art. I respectfully disagree with the positions taken in the Office Action and submit the following:

A. The definition set forth in the Office Action for ballast, i.e. any such weight that is provided in addition to the original weight of the fluke so as to further increase the total weight of the fluke, is not proper.

B. The present application as filed includes a definition of a non-ballasted anchor that distinguishes non-ballasted anchors from ballasted ones. The description reads:

The anchor is unballasted, in that there is no need to provide additional ballasting on the fluke – as in EP-B-0 840 691 or in FR-A-2 820 108.

(Page 2 lines 34-36). Thus, the description in the present application indicates to one skilled in the art that a non-ballasted anchor is such that there is no need to provide additional ballast, such an additional ballast being represented in EP-B-0 840 691 and FR-A-2 820 108.

C. As set forth in the present specification and according to the ballast definition of set forth in the present application, the thicker part of the anchor disclosed in FR-A-2 820 108 is an additional ballast. Hence, one skilled in the art would understand from reading the present specification that the chevron tip part made of cast lead or cast steel represented in EP-B-0 840 691 is an additional ballast according to the ballast definition of the present application.

D. Likewise, the present application states that a ballasted fluke is as disclosed by the prior art. (Page 3 lines 1-2). Referring to the prior art, the present

application states that the center of mass of the fluke is near to the tip of the fluke – due to the ballast. (Page 3 lines 2-3). In FR-A-2 820 108, the thicker part of the fluke is responsible for displacing the center of mass of the fluke near the tip. (See Figs. 1 and 2 and page 4 lines 11 and 19-20). Similarly, in EP-B-0 840 691, the chevron tip part made of cast lead or cast steel displaces the center of mass of the fluke near the tip. Thus, one skilled in the art would understand that the prior art mentioned in the present application, EP-B-0 840 691 and FR-A-2 820 108, describe ballasted flukes according to the ballast anchor definition of the present application. Further, one skilled in the art would understand that the thicker part in EP-B-0 840 691 and FR-A-2 820 108 is ballast according to the ballast definition of the present application.

E. The explanation set forth in paragraphs 3.A-D above is consistent with what one skilled in the art would understand the term ballast to mean with respect to anchors.

F. Prior art non-ballasted anchors do not have sufficient weight at the tip and require an additional roll bar on the rear part of the fluke to facilitate its penetration by allowing the anchor automatically to be in preliminary anchoring position. Yet, if this roll bar allows the automatic positioning of the anchor, it adds weight on the rear part of the anchor, and not on the tip.

G. The present invention improves over the prior art by, *inter alia*, fixing the shank on the front half of the fluke and, hence, using the weight of the shank to replace the need for ballast. By avoiding ballast, the present invention can, for a given weight, increase the surface area of the fluke significantly as compared to

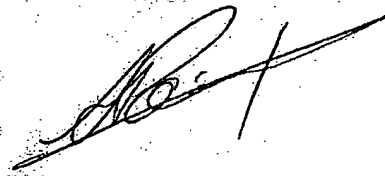
ballasted anchors. Subsequently, the present invention increases the set of the anchor in the same proportions.

4. In my opinion, as set forth above, the prior art fails to disclose or suggest the features of the presently claimed invention. Namely, the cited prior art describes ballasted anchors that cannot achieve the significant improvements that the present invention provides.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

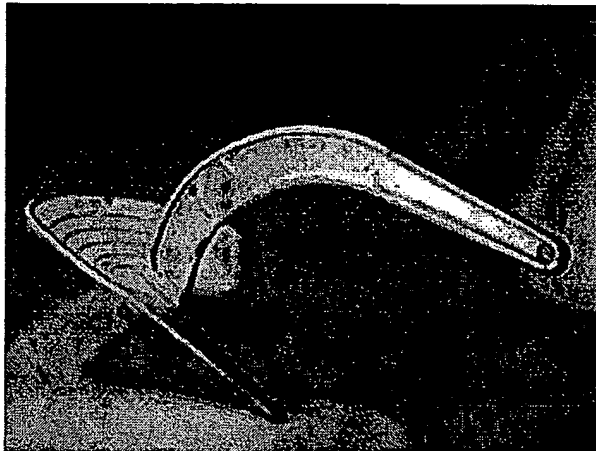
Alain Poiraud

A handwritten signature in black ink, appearing to read 'Alain Poiraud', is written over a horizontal line.



Regarding the position of the shank, in FR 2820108, the position of the fixation of the shank has not been conceived to increase the weight repartition on the anchor tip. FR 2820108 fails to disclose or suggest that "the shank is mounted on the half portion of the fluke." The drawing in FR 2820108 is merely an "artistic" representation of its anchor. On its Fig. 2, the angle B described as the angle formed by a straight line joining end(3) to end (15) connected to fluke (2) and a tangent to the center line (9) of fluke (2) is between 34 and 40°. Applicants measured this angle B on the FIG 2 to be 42°. Thus, the drawings are unreliable and should not be interpreted to show the claimed feature.

The Applicant submits that the exact view of the anchor patented by FR 2820108 is:



Clearly, the shank is mounted on the back half of the fluke.

X.

RELATED PROCEEDINGS APPENDIX

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